IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

C. E. WYNN-JOHNSON,
Plaintiff in Error,

vs.

JAMES M. SHOUP, United States Marshal for the District of Alaska.

No. 266.

In Error to the District Court of the United States for the District of Alaska.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

Correction.

By leave of court first obtained, we file brief in reply to the argument of the Honorable Attorney General filed in behalf of the defendant in error.

Before proceeding to reply we call the attention of the court to an error in the balances, stated on page 8 of the original brief, to have been covered

into the Treasury of the United States from the District of Alaska on account of license taxes since the passage of the law in controversy. The correct amount, as shown by the Secretary's letter, is $439,906.43 instead of $207,325.74 as stated by us.

The positions Assumed by Defendant in Error.

Counsel for defendant in error, at page 4 of his brief, states the questions involved in the case as follows:

Questions of Law.

I.

"It is suggested, in behalf of the Government, that this writ of error should be dismissed for the reason that it appears from the record that the *habeas corpus* proceedings in the court below was had before the United States district judge of Alaska sitting as a judge and not as a court.

II.

"The other question of law presented by this appeal is the constitutionality of section 460, of Title II, of the Act of Congress of March 3, 1899 (30 Stat., 1253, 1336), as amended by the Act of June 6, 1900 (31 Stat., 321, 330), imposing license fees for prosecuting certain specified lines of business and trade in the Territory of Alaska."

The contention of the Government as to the second proposition is thus stated in the brief in the Binns case referred to and made part of the brief in this case:

"The Government contends that such law is constitutional for the reason that Alaska is territory *belonging to the United States*, and that Congress is authorized to impose these license fees not by reason of the general power of taxation provided for in Article I, section 8, of the Constitution, but from the plenary power 'to make all needful rules and regulations respecting the territory or other property belonging to the United States' (Article IV, section 3, paragraph 2), and that the exercise of such power is not subject to the provisions limiting the general power of taxation either as to apportionment or uniformity."

This proposition is subdivided by him as follows:

(*a*) "The license fees imposed by this law are a part of a penal code, and in the nature of police regulations, which, in the judgment of Congress, are necessary for the government of the Territory of Alaska by reason of its social conditions."

(*b*) "Congress has the power to license various trades and occupations in the Territories independently of and apart from the power to tax, and the mere fact that revenue is derived as an *incident* to the exercise of such power will not operate to characterize the license fee as a tax."

(*c*) "If taxes at all, these license fees are *local taxes* imposed by Congress as the legislature of Alaska, and paid into the Treasury of the United States as the only treasury of Alaska, and *obviously* intended to meet the expenses of governing that Territory."

(*d*) "Congress could not make these licenses uniform throughout the United States."

(*e*) "Admitting, for the purpose of argument, that these license fees are *local taxes* imposed by Congress in the Territory of Alaska and appropriated by Congress to the *support of the General Government*, we assert that such a law would be constitutional under the plenary power of Congress to govern the Territories."

In conclusion counsel, while suggesting that although intimations were given by some of the members of this court in the case of Downes *vs.* Biddell (182 U. S., 244), that Alaska had been "incorporated" and that the general taxing clause of the Constitution extended to that District, yet it had never been directly so decided, but that, in his opinion, that question is not necessarily involved in this case. We will take up these propositions in the order in which they are presented by counsel for defendant in error.

I.

The Proceeding Below was in Court.

As to the "suggestion" that the suit should be dismissed for the reason that the record shows the proceeding below was "before the judge sitting as a judge and not as a court," we insist counsel is mistaken as to what the record shows. Examination of the record shows that every step taken in the proceedings below, from the filing of the petition to the final order, was taken *in court.*

At page 1 the caption reads as follows:

"UNITED STATES OF AMERICA,
District Court of Alaska, Division No. 1, } *ss:*

Pleas and proceedings begun and held in the District Court of the United States for the District of Alaska, at the October term, 1901.

In the Matter of the Application of C. E. Wynn-Johnson for a writ of *habeas corpus*, No. 138.

On October 29, 1901, the plaintiff filed his petition in the said cause, which is in the words and figures following, to wit:"

Then follows copy of the petition addressed to the judge of the court. This is endorsed as follows:

"No. 138. In the U. S. Dist. Court for Alaska, Div. No. 1. In the matter of the application of C. E. Wynn-Johnson for a writ of *habeas corpus*. Petition. Filed Oct. 29, 1901. W. J. Hills, clerk, by —— ——, deputy. J. G. Heid, att'y for petitioner" (p. 2).

This proves conclusively that the proceeding was begun in court, the case docketed, numbered, and properly filed by the clerk. And, while it is true, as stated by counsel, the writ directed the marshal to have the prisoner before the judge, the record shows (bottom p. 3) the order was made: "In the United States District Court for the District of Alaska, Division No. 1," and reads as follows:

"It is ordered that a writ of *habeas corpus issue out of* and *under the seal of the United States District Court*, for the District of Alaska," etc.

By the Court:

M. C. BROWN, *Judge.*"

This was also endorsed by the clerk the same as the petition.

The writ itself commanded the marshal to have the prisoner before the judge "at the court-room of *said court* at Skagnay."

Again, at page 8 of the record, where the opinion is set out, the proceeding is entitled as follows:

"In the United States District Court for the District of Alaska."

Then follows the opinion of the court, in concluding which it is said:

"*The court* will refuse to discharge the said Johnson from custody," etc.

This is also filed and endorsed by the clerk of the court.

At page 12 we have the proceeding resulting in the final order, which is entitled as follows:

"In the United States District Court for the District of Alaska, Div. No. 1."

After entitling the case, it is said:

"The cause having been *submitted to the court* upon the brief of the parties hereto, and the *court*

having had the same under consideration," * * * "all in accordance with the decision this day *handed down by the court* and *placed on file;* and the clerk of this court is hereby directed to prepare," etc.

Also—

"It is ordered *by the court* that said defendant be discharged upon his giving to the marshal a good and sufficient bond in the sum of $5,000," etc., "for his appearance for trial."

If nothing else appeared in the record to indicate that the proceeding was in the court, and not before the judge in chambers, the final order and bond for the appearance of the prisoner in court for trial, in the language above set out, would prove conclusively that it was *in court.* (Palliser *vs.* The United States, 136 U. S., 256.)

The case at bar is clearly distinguishable from the case of Carpers *vs.* Fitzgerald (121 U. S., 87), cited and relied on by counsel for the Government.

In that case the record fully showed the proceeding was before the judge in chambers in Baltimore, and that he directed that the papers thus filed before him and his order be recorded in the circuit court at Richmond, Va., while in the case at bar the whole proceeding took place *in the court*, on the same day, was docketed, and entered of record *in the court*, then sitting, at the time.

II.

The Unconstitutionality of the Law.

Having shown in our original brief, by the letter of the Secretary of the Treasury, that the position of the trial court, that the provision in the law authorizing that official to make rules and regulations governing the covering of balances derived from these license fees into the Treasury of the United States made them local, was erroneous, for the reason that no rules or regulations of any kind had ever been presented under the Act, but, on the contrary, more than four hundred thousand dollars of such fees had been covered into the Treasury as part of its general fund, we deem it unnecessary to further consider it here.

Johnson, the plaintiff in error, was indicted for failing to take out a license under the Act in question, which provides that such a failure is a penal offense to be visited with fine and imprisonment, and makes each day's business done without such license a separate offense with increasing penalties. The amount of this license tax is not fixed by any certain sum to be paid in advance for doing such business, nor is any basis provided, by which such license tax may be determined at the time it is demanded, but it is dependent wholly upon the amount of business which may be done in the future, the Act providing that upon all freight handled or stored, a charge, or tax, of ten cents per ton should be paid.

It is submitted that this statute is too vague and uncertain to support a criminal indictment.

In his statement of the case, counsel at pp. 2 and 3 of his brief, says the plaintiff in error was indicted December 10, 1900, and that on March 12, 1901, he entered into a recognizance in the sum of $200 for his appearance to answer said indictment, and that on October 29, 1901, his sureties surrendered him to the Marshal, and that on the same day he filed petition for a writ of *habeas corpus*.

It is evident this referred to an indictment under the old law which fixed the license fee at $100 per annum, and not the one in this case. This is made clear by the statement of the court in its opinion on page 8 of the record, wherein it is stated that he was indicted at the Skaguay October, 1901, term of the court, and a bench warrant was issued upon said indictment and he was taken into custody and brought into court by the Marshal, and that having failed and refused to give bail filed his petition for the writ.

This is still further shown by the order of the court fixing the amount of bond required for his appearance for trial, upon the refusal of the court to discharge him on the writ of *habeas corpus*, as set out at p. 12 of the record, at the sum of $5,000. Why an increase of the bond from $200 to $5,000, unless it was based upon an indictment founded upon a statute fixing a higher penalty for its violation? Under the amendment of June 6, 1900, the license was fixed at "ten cents per ton of freight handled or stored," instead of $100 per year as

provided in the old law, and the indictment in this case is under that statute. The fact that the court fixes the bond at $5,000, was evidently to cover his liability under the law (which was arbitrarily put by the statute at the amount of the license fee), and the estimated costs.

We may, therefore, properly assume that the estimated amount of the license fee was near $5,000.

Certainly it will not be contended that this sum is the probable and reasonable cost of the issuing of the license and the regulation of a class of business which does not fall within the domain of police regulations, and requires none whatever. Again it is perfectly clear from the arrangement of the statute it was intended for revenue. It is graduated upon the amount of business done, the number of tons of freight handled or stored. This is true also of mercantile establishments. They are taxed from $10 to $500, graduated by the amount of business done. It seems unnecessary to argue that this is for revenue and not for regulation.

The first proposition of counsel for the Government, in support of the law, is that these license taxes are a part of a penal code, and in the nature of police regulations, the authority for the requirement of which is claimed to be Article IV, paragraph 2, of the Constitution, and hence not subject to the limitation in the uniformity clause.

Without questioning the police power of the Federal Government in the Territories, we insist that

the exaction of these license fees is not referable to that power, but fall clearly within the class of taxes for the purpose of revenue, and hence must be uniform throughout the United States.

Referring to the limitations on the exercise of the police power, the rule is thus stated at page 873, Vol. 8, Cycl. of Law and Procedure:

"The right to use property in the prosecution of any business which is not injurious or offensive to the community at large or to persons within its vicinity is one of the legal attributes of ownership of property of which the owner cannot be deprived by any State law or municipal ordinance."

The author cites the cases of People *vs.* Berrien, Circuit Judge, 124 Mich., 664, holding that an Act directed wholly at commission merchants selling farm products, requiring them to pay a license fee and give bond is unconstitutional and an unjustifiable interference with the rights of citizens to carry on legitimate business, and *In re* Hong Wah, 82 Fed., 623, holding a municipal ordinance declaring it a nuisance to carry on a public laundry except in certain designated places, was unconstitutional.

It is true, as held by this court in the case of Munn *vs.* Illinois (94 U. S., 113), business peculiarily and intimately affecting the public interest, may be regulated. But Judge Cooley, in his work on Const. Lim. (5 Ed., 737,) enumerates the classes of cases falling within that principle, as follows:

"1. When the business is one the following of which is not of right, but is permitted by the State as a privilege or franchise. Under this head would

be comprised the business of setting up lotteries, of giving shows, etc., by keeping billiard tables for hire, and of selling intoxicating drinks, when the sale by unlicensed parties is forbidden; also the cases of toll-bridge, etc. 2. When the State on public grounds renders to the business special assistance, by taxation or otherwise. 3. Where for the accommodation of the business some special use is allowed to be made of public property or of a private easement. 4. Where exclusive privileges are granted in consideration of some special return to be made to the public."

It is not pretended that the business in question in this case is of that class which might injuriously affect the lives, health, comfort, morals or quiet, and good order of the public, and which for the welfare of society might be restrained or regulated. A glance at the forty-two occupations or callings required by the Act to be licensed includes besides public docks and wharves, such as electric light and gas plants, fisheries, insurance agents, jewelers, quartz mills, mercantile establishments, planing mills, restaurants, sawmills, taxidermists, and waterworks. Can it be said these require regulation under the police power? We apprehend not.

It will be admitted, we have no doubt, not only that regulation of these occupations is not permissable, but that in no case has any regulation of any kind been prescribed under the law in controversy.

The doctrine of the Munn case, *supra*, goes only to the power to regulate, in the interest of the public, the business which the private owner has to a degree dedicated to the use of the public, and

in no sense to the power to tax for revenue. And it must be admitted the Alaska Act did not provide any regulations, or make any provision for the regulation of any of the lines of business embraced by it. No regulations of any kind were made or provided for except only that of *covering the revenue to be derived from the license taxes into the Treasury of the United States as a part of its general fund.* It follows that taxation and not regulation was the purpose of the Act, and that the doctrine of that case is not applicable.

Judge Cooley, in the 7th edition of his work on Constitutional Limitations, at page 71, after referring to the Munn case and stating that there was doubt in some cases, said that "some of the cases referred to seem clear enough. Ferries and public highways, and where individuals are permitted to establish them, they are allowed the sovereign prerogative of charging and collecting tolls, and tolls can never be taken except by permission of the State, which generally ought to and does prescribe limits."

It is a Revenue Measure.

But even if the occupation in question, and all others covered by the Act, clearly fall within the class of cases subject to police regulation, yet it is apparent it was intended by Congress not only primarily, but *wholly* as a revenue measure, and in no sense as a police regulation. This being the

case the power to enact must be derived from the taxing clause of the Constitution which requires uniformity.

It is conceded by counsel for the Government in effect that if the primary object of the Act was revenue, it would not fall within the purview of Article IV, section 3, paragraph 2 of the Constitution, as contended by him, but the uniformity clause.

There can be no question that Congress intended the Act solely as a revenue measure. This fully appears from the proceedings in the two Houses, which is printed as an appendix to this brief.

It is shown that the Speaker of the House ruled the license feature of this criminal code out on a point of order as being a revenue measure and not germane to the bill. In the Senate it was reported as an amendment, and when it was being considered, upon inquiry by Senator Chandler of Senator Shoup, who was in charge of the bill, he stated:

"The Committee on Territories have thoroughly investigated the condition of affairs in Alaska and have prepared certain licenses which, in their judgment, will *create a revenue* sufficient to defray all the expenses of the Government in the Territory of Alaska."

Again he said:

"They are licenses peculiar to the condition of affairs in the Territory of Alaska on certain lines of goods, articles of commerce, etc., which, in the

judgment of the Committee, should bear a license, inasmuch as there is no taxation whatever in Alaska. Not one dollar of taxes is raised on any kind of property there."

But, in our opinion, the law, on its face, proves conclusively that it is a revenue measure. For, aside from the fact that no regulation is provided for and no intimation is given that any is intended, the character of the business taxed and the amount of the license fees stamp it as a revenue measure pure and simple. Since counsel for the defendant in error has printed in the Binns brief, made a part of his brief in this case, as appears in Appendix "A" at page 41, a complete list of occupations taxed and the amount of annual tax required of each, we will not repeat it, but will call attention to the following:

Abstract offices pay $50; banks, $250; boarding houses having accommodations for ten guests or more, $15; brokers, $100; billiard-rooms, $15 per table; bowling alleys, $15; breweries, $500; bottling works, $250; cigar manufactories, $25; cigar stores, $25; drug stores, $50; electric light plants, $300; freight and transportation lines, $1.00 per ton; gas plants, $300; hotels, $50; public halls, $10; insurance agents and brokers, $25; jewelers, $25; quartz mills, $3 per stamp; mercantile establishments doing business of $100.000, $500; $75,000, $375; $50,000, $250; $25,000, $125; $10,000, $50; under $10,000, $25; under $4,000, $10; meat markets, $15; physicians, $50; planing

mills, $50; pawnbrokers, $300; pedlers, $25; patent medicine venders, $50; railroads, $100 per mile; restaurants, $50; real estate dealers and brokers, $50; ships and shipping, $1.00 per ton; sawmills, ten cents per thousand feet of lumber sawed; steam ferries, $100; toll road or trail, $200; tobacconists, $15; tramways, $10 for each mile; transfer companies, $50; taxidermists, $10; theatres, $100; waterworks, $50.

As to public wharves and docks, the Act of 1899 fixed the fee at $100, but by the amended Act of June 6, 1900, under which, according to the statement of the court, Johnson was indicted, it was fixed at ten cents per ton on all freight handled or stored. While the amount of the tax under this amendment does not appear in the record, the fact that the law fixes the penalty for a violation at the amount of the tax, and that the court, as shown by the record, fixed Johnson's bail for his appearance for trial at $5,000, shows that it must have approached that sum. And we are informed that it is over $4,000. Now, the rule is well settled that when the license fee charged is in excess of the cost of issuing license and necessary regulation of the business, *it is a tax*.

Royal *vs.* Virginia, 116 U. S., 572.

Cooley on Constitutional Limitations, secs. 201, 495, and 587.

Cooley on Taxation, secs. 531 and 592.

As to the distinction between tax and license for regulation, we beg to refer to—

Dillon on Municipal Corporations, 3d ed., secs. 358, 359, and 368, and authorities there cited.

As to the police power, we refer to—

Cooley on Taxation, pp. 75, 586, 587, and 605.
Burroughs on Taxation, p. 509.

Section 463 of the Act providing for the issuing of the licences provides as follows:

"The clerk of the court shall be entitled to receive from each applicant for a license a fee of five dollars, and no other or additional compensation shall be paid such clerk for his services in connection with such license or the issue thereof."

It thus appears that aside from the cost of regulation, which, as we have seen, is not prescribed and has never existed, the only other charge for which a license fee could be exacted under the police power, viz., the cost of issuing the license, is required by the law to be paid by the applicant in addition to the license fee fixed.

The results flowing from the operation of the law prove that the Speaker of the House of Representatives, who sustained the point of order made against the amendment that the license provisions were not germane to a bill providing a criminal code for Alaska, because they constituted a *revenue measure;* and Senator Shoup, who was in charge of the bill in the Senate, when he stated that the Com-

mittee on Territories considered the lines of business mentioned should bear a license which would produce revenue sufficient to defray all the expenses of the district, well understood what they were talking about. For the official report of the Secretary of the Treasury, printed as an exhibit to our original brief, shows that for the four years and a half the law has been in force, after deducting the fifty per cent. required to be expended for school purposes, and all sums authorized and required to pay incidental expenses of the court, as provided in section 7 of the Act of June 6, 1900, and for the construction and repair of jail buildings and court houses, as provided for in section 31 of said Act, and the further sum of $98,642.02, set aside for expenditure by the Secretary of the Interior for school purposes, there were covered into the Treasury of the United States, as "a part of its general fund," the sum of $439,926.43, or an average of $100,000 a year.

No other people have ever been thus taxed by our Federal Government. And yet it is sought to justify it as a reasonable exercise of the police power conferred upon Congress by the Constitution. We cannot believe this court will sustain that contention.

The Plenary Power of Congress to Govern the Territories.

But, the Hon. Attorney General, disparing, as it seems to us, of being able to convince the court that these licenses are police regulations, as contradisguished from taxation; or that they are local taxes

levied upon Alaska by Congress, as its legislature, for local purposes, in the face of the official report of the Secretary of the Treasury, above referred to, takes the position that even if neither of these positions are tenable, and if in point of fact these extraordinary taxes are levied upon Alaska *locally* and expended by Congress under appropriations for *general purposes*, such act would be constitutional under the plenary power of Congress to govern the Territories.

Counsel cites no authority which supports his position, and we apprehend he can find none. At least, we have been unable to discover any decision or general authority in support of this unlimited power of unequal taxation. Of the deliberate taxation of the people of one section of the country for the benefit of all sections. Even if there were no specific limitations, the very proposition shocks our sense of justice, fairness, and equality of all our people before the law. And it is the more unjustifiable in this instance for the reason that it is notorious the people of Alaska are deprived of many of the benefits of goverment by reason of their isolation. This should afford a reason for lightening their burdens, whenever and wherever lawful and practicable, instead of heaping upon them unusual, unprecedented, and unjust ones.

The case of Gibbons *vs.* District of Columbia (116 U. S. 404), cited by counsel does not support his contention, but on the contrary, held that the power of Congress, legislating as a local legislature for the District, to levy taxes *for District purposes*

only, in like manner as a State legislature was unrestricted by constitutional provision. But, to levy such taxes for *general purposes*, is a very different proposition.

Neither does the quotation made from the opinion of Mr. Justice White in Downes *vs.* Biddle, *supra*, to the effect that both local and national taxes could have been levied upon Porto Rico, although she had no local government and was not represented in Congress, sustain the contention of counsel.

National taxes (internal revenue and customs) are collected in Alaska and have been since 1868, and we do not question the power of Congress to levy *local taxes* for *local purposes only*, in addition to these national taxes. But we do deny both the power and the justice of levying these local taxes for *general* purposes. Counsel admits that, so far as he knows, Congress has never attempted to tax the Territories *except* for *local purposes*. It is strange, if such power existed, Congress when sorely in need of national funds, as it has been many times in the early history of the country, did not resort to this method of raising revenue for the national government. And it is more surprising that that body should have availed itself of this source of revenue at the expense of our own hardy pioneers who have settled up that far north country under so many disadvantages and discouragements, at a time, too, when the Treasury was overflowing with a large surplus of national taxes.

"It has been forcibly, yet very truly, said that an unlimited power in the legislature to make any and everything lawful which it might see fit to call taxation, would, when plainly stated, be an unlimited power to plunder the citizen." Cooley on Taxation, 7 ed., p. 183, citing Saving and Loan Ass'n *vs.* Topeka (20 Wall., 655), and Cole *vs.* La Grange (113 U. S., 1).

In the former of these cases, Mr. Justice Miller, speaking for the court, said:

"The theory of our governments, State and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers.

There are limitations on such powers which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name."

Conclusion.

In conclusion, we insist:

1. The Act in question is unconstitutional because it violates the uniformity clause of the Constitution.

2. That the contention of counsel for defendant in error that these license fees are local taxes is erroneous, for the reason that a part of them are paid into the Treasury of the United States and become, in the language of the Secretary, "a part of its general fund," and under the Constitution can be drawn out only in consequence of appropriation by Congress.

3. They are not police regulations, for the reasons:

(*a*) Because it applies to occupations the regulation of which does not belong to the police power.

(*b*) Fee is in excess of the cost of license, which cost is also paid by applicant.

(*c*) Not intended as police regulations, as none were provided by Act.

(*d*) Discussion in Congress proves it was intended as a revenue measure.

(*e*) The license fees are graduated in the case at bar and other cases by the amount of business transacted, showing it is clearly for revenue and not for regulation.

4. It has not been shown that Congress has the plenary power to tax the people of the Territories *locally* to raise revenue to be used for general purposes, and as it would be unequal and unjust taxation, we do not think such contention can be sustained.

It follows that the final judgment of the trial court should be reversed, the law held to be unconstitutional and void, and the plaintiff in error released from custody and permitted to follow his harmless occupation without further annoyance.

Respectfully submitted.

S. M. Stockslager,
Geo. C. Heard,
Attorneys for Plaintiff in Error.

APPENDIX.

At page 395, vol. 32, part 1, of the *Congressional Record* (3d Session, 55th Congress), what are now sections 460 and 461 of "An act to define and punish crime in the District of Alaska and to provide a code of criminal procedure for said District, approved March 3, 1899" (30 Stats., 1336), together with others, was offered by Mr. Tongue of Oregon.

At page 581, of the same volume, this amendment was reached for consideration and the following colloquay occurred:

The Speaker. Does the gentleman from Oregon regard this as an admissible amendment?

Mr. Tongue. Well, I submit it for the consideration of the House. There may be some question as to a part of it. I think there is no question as to the main part of the provision, however, the part which has not yet been read.

Mr. Grosvenor. Mr. Speaker, the point of order was reserved.

The Speaker. The point of order had been reserved, and the question is whether the amendment is admissible.

Mr. Loyd. I make the point of order that it is not germane to the bill.

Mr. Grosvenor. There is a better and an unanswerable point of order, that this is a measure to raise revenue, and has not come from the Committee on Ways and Means, and has not been referred to that committee. I do not see how you can raise revenue through the instrumentality of a code of criminal procedure for the District of Alaska.

Mr. Payne. This would amend the internal revenue laws so far as the District of Alaska is concerned.

The Speaker. It would amend the internal revenue laws, and would create a crime for the sake of punishing it.

Mr. Tongue. If I may be permitted, I will say that, so far as the main portion of this bill is concerned, it is now a crime in Alaska to import or sell liquor, and almost a crime to drink it there. This amendment proposes to modify the provision in reference to liquor. It seems to me that that portion of it, at least, is germane.

The Speaker. It proposes also to establish a scheme of taxation. This is a proposition to codify the criminal code of Alaska. It would look as if those two things were incompatible.

Mr. Tongue. Is the provision of this amendment modifying the liquor laws of Alaska incompatible with this bill? This bill deals with that subject.

The Speaker. The difficulty is, supposing you admit that it is not incompatible with that, there are, nevertheless, a great many other things in the

amendment which are entirely incompatible with that and everything else.

Mr. Tongue. Those can be separated. That objection applies only to the first section of the amendment, while the remaining portion deals exclusively with the liquor question, and modifies the present liquor laws as contained in this bill.

The Speaker. The amendment is offered as a whole. If any of it is obnoxious to the objection, it would all have to be ruled out.

Mr. Tongue. If the Chair thinks the first two sections inadmissible, then I ask to strike them out and move the remainder as an amendment.

Mr. Moody. I reserve the point of order against that, Mr. Speaker.

Mr. Dockery. What is the remainder?

Mr. Tongue. The remainder deals wholly with the liquor question.

At page 2235, vol. 32, part 3, same session, when the bill was being considered in the Senate, the provision with reference to license was offered as a substitute for sections 461 and 462, when Senator Chandler made the following observations and inquiries:

> "The sections which are now being read appear to be all new additions to the bill proposed by the Senate Committee on Territories. There appears to be a very elaborate system of taxation by license fees, and then there follow statutes regulating the sale of liquor in the

Territory. They seem to have been carefully prepared, but they will, of course, arouse some discussion before the bill is disposed of in the Senate. I only wish now to have from the chairman of the committee, whom I see present, or the Senator from Idaho (Mr. Shoup) tell me, if he can and is willing to do so, from the statutes of what other States the sections have been derived, if they have been taken from similar statutes in other States. What is the origin of those provisions? Are they original with the committee or are they taken from previous statutes in existence elsewhere?"

To his inquiries, Senator Shoup answered as follows:

"I wish to state to the Senator from New Hampshire that by previous agreement there is to be no action upon these amendments to-night. The license law is practically the same as that of the District of Columbia. I will state not for the purpose of discussion, but merely for the information of the Senator from New Hampshire that the license law is taken from that of the District. The Committee on Territories have thoroughly investigated the condition of affairs in Alaska and have prepared certain licenses which in their judgment will create a revenue sufficient to defray all the expenses of the government of the Territory of Alaska."

To which Senator Chandler replied as follows:

"Do I understand the Senator to say that the body of the license taxes provided for and the liquor licenses are taken from the statutes prevailing in the District of Columbia?"

To which Senator Shoup again made answer as follows: "That is correct."

> "The details are somewhat different, but they are based so far as the liquor law is concerned, on the District law. The other licenses are not. They are licenses peculiar to the condition of affairs in the Territory of Alaska on certain lines of goods, articles of commerce, etc., which in the judgment of the committee, should bear a license, inasmuch as there is no taxation whatever in Alaska. Not one dollar of taxes is raised on any kind of property there. It is therefore necessary to raise revenue of some kind, and in the judgment of the Committee on Territories, after consultation with prominent citizens of the Territory of Alaska, including the Governor and several other officers, this code or list of licenses was prepared by the committee. It was prepared largely upon their suggestions and upon the information of the committee derived from conversing with them."

To which Mr. Chandler again responded as follows:

> "Then I understand that the commmercial and business conditions in Alaska being peculiar, a special code of license taxes has been devised."

To which Mr. Shoup replied: "That is correct".